IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

Rashee Grant (#2016-1113089),	)	
	)	
Plaintiff,	)	
	)	Case No. 17 C 2267
v.	)	
	)	Judge Thomas M. Durkin
Officers, et al.,	)	
	)	
Defendants.	)	

ORDER

Plaintiff's application for leave to proceed *in forma pauperis* [3] is granted. The Court orders the trust fund officer at Plaintiff's place of incarceration to deduct $21.75 from Plaintiff's account for payment to the Clerk of Court as an initial partial payment of the filing fee, and to continue making monthly deductions in accordance with this order. The Clerk of Court is directed to electronically send a copy of this order to the Supervisor of the Inmate Trust Fund Accounts at the Cook County Jail. The Court further directs the Clerk of Court to: (1) file Plaintiff's complaint [1]; (2) dismiss and terminate Defendants "Officers" and "Chicago Police Department 024 District"; (3) issue summonses for service on Defendants M.J. Brannigan #9670 and A.M. Randazzo #19979 by the U.S. Marshal; and (4) send Plaintiff two blank USM-285 service forms and a copy of this order. The Court advises Plaintiff that a completed USM-285 form is required for service on each Defendant for whom summons has issued (Brannigan and Randazzo). The U.S. Marshal will not attempt service on a Defendant unless and until the required form for that Defendant is received. Plaintiff therefore should promptly return the completed forms as directed. The U.S. Marshal is appointed to serve Defendants Brannigan and Randazzo. Plaintiff's motion for attorney representation [4] is denied without prejudice to later renewal.

STATEMENT

Plaintiff Rashee Grant an inmate at Cook County Jail, brings this pro se civil rights action pursuant to 42 U.S.C. § 1983, challenging two police officers' use of force in effecting his arrest and failure to promptly address his resulting medical needs. Currently before the Court are Plaintiff's application to proceed *in forma pauperis*, his complaint for initial review under 28 U.S.C. § 1915A, and his motion for attorney representation.

Plaintiff's Application for Leave to Proceed In Forma Pauperis

Plaintiff's application for leave to proceed *in forma pauperis* demonstrates he cannot prepay the filing fee and is thus granted. Pursuant to 28 U.S.C. § 1915(b)(1), (2), the Court orders: (1) Plaintiff to immediately pay (and the facility having custody of him to automatically remit) $21.75 to the Clerk of Court for payment of the initial partial filing fee and (2) Plaintiff to pay (and the facility having custody of him to automatically remit) to the Clerk of Court twenty percent of the money he receives for each calendar month during which he receives $10.00 or more, until the $350 filing fee is paid in full. The Court directs the Clerk of Court to ensure that a copy of this order is mailed to each facility where Plaintiff is housed until the filing fee has been paid in full. All payments shall be sent to the Clerk of Court, United States District Court, 219 South Dearborn Street, Chicago, Illinois 60604, attn: Cashier's Desk, 20th Floor, and shall clearly identify Plaintiff's name and the case number assigned to this case.

Initial Review of Plaintiff's Complaint

Under 28 U.S.C. §§ 1915(e)(2) and 1915A(a), the Court is required to screen pro se prisoners' complaints and dismiss the complaint, or any claims therein, if the Court determines that the complaint or claim is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. *See Jones v. Bock*, 549 U.S. 199, 214 (2007); *Turley v. Rednour*, 729 F.3d 645, 649 (7th Cir. 2013).

Courts screen prisoner litigation claims in the same manner as ordinary Federal Rule of Civil Procedure 12(b)(6) motions to dismiss. *See Maddox v. Love*, 655 F.3d 709, 718 (7th Cir. 2011). A motion under Rule 12(b)(6) challenges the sufficiency of the complaint. *See Hallinan v. Fraternal Order of Police of Chi. Lodge No. 7*, 570 F.3d 811, 820 (7th Cir. 2009). Under Rule 8(a)(2), a complaint must include "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). The short and plain statement under Rule 8(a)(2) must "give the defendant fair notice of what the claim is and the grounds upon which it rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citation omitted). Under the federal notice pleading standards, a plaintiff's "[f]actual allegations must be enough to raise a right to relief above the speculative level." *Id*. Put differently, a "complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570).

"In reviewing the sufficiency of a complaint under the plausibility standard, [courts] accept the well-pleaded facts in the complaint as true." *Alam v. Miller Brewing Co.*, 709 F.3d 662, 665-66 (7th Cir. 2013). Courts also construe *pro se* complaints liberally. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam). A plaintiff may, however, plead himself out of court by alleging facts that defeat his claim. *Atkins v. City of Chicago*, 631 F.3d 823, 832 (7th Cir. 2011); *Tamayo v. Blagojevich*, 526 F.3d 1074, 1086 (7th Cir. 2008). Nor are courts "bound to accept as true a legal conclusion couched as a factual allegation." *Twombly*, 550 U.S. at 555 (citing *Papason v. Allain*, 478 U.S. 265, 286 (1986)).

Here, Plaintiff alleges that, at about 8:43 p.m. on November 11, 2016, as he and a friend walked southbound, they were alarmed by the sudden and aggressive approach of an unmarked dark grey SUV. (Dkt. 1, pg. 4.) "In fear for [his] life," Plaintiff fled, and the SUV's occupants pursued, one (Officer A.M. Randazzo) on foot, and one (Officer M.J. Brannigan) in the vehicle. (*Id*. at 4-5.) Plaintiff "gave flight continually" into an alley. (*Id*. at 5.) Officer Randazzo drew back, and Officer Brannigan, attempting to "stop [Plaintiff's] flight," struck him with the SUV.

(*Id.*) Plaintiff fell and, when he rose, could neither walk nor run and felt severe pain in his foot, hands, knees, and elbows. (*Id.*) Although he told the officers of his injuries, the officers lifted him into their SUV, drove him to the police station, and dragged him to a holding cell. (*Id.* at 5-6.) Plaintiff's repeated requests for medical attention were unavailing, until 11:43 p.m., when the arresting officers informed Plaintiff he was being taken for treatment. (*Id.* at 6.) Plaintiff seeks monetary damages. (*Id.* at 7.)

Accepting Plaintiff's factual allegations as true, as it must at this juncture, the Court finds that the complaint states an excessive force claim against Officers Brannigan and Randazzo. *See Williams v. Brooks*, 809 F.3d 936, 944 (7th Cir. 2016) (explaining that "[a]n officer who has the right to arrest an individual also has the right to use some degree of physical force or threat of force to effectuate the arrest," but explaining that amount of force used must be objectively reasonable). Similarly, the complaint states a claim of deliberate indifference against the officers. *See Williams v. Rodriguez*, 509 F.3d 392, 403 (7th Cir. 2007) (explaining that, under the Fourth Amendment, an arrestee has a right to adequate medical care). Accordingly, Officers Brannigan and Randazzo must respond to Plaintiff's complaint. Nothing in this order, which is based on preliminary review of the complaint, precludes any legal argument that Defendants may advance in response to Plaintiff's allegations.

The remaining Defendants are dismissed. To the extent that Plaintiff intended "Officers" or "Chicago Police Department 024 District" to be separately named as Defendants (Plaintiff may have included those terms to better identify the officers rather than to list additional Defendants), they are dismissed. Unidentified "officers" cannot be served unless named in a complaint complete with allegations regarding their allegedly unlawful conduct. And "Chicago Police Department 024 District" is not a suable entity. *See, e.g., Chan v. Wodnicki*, 123 F.3d 1005, 1007 (7th Cir. 1997) (noting dismissal of Chicago Police Department); *Best v. City of Portland*, 554 F.3d 698, 698 n.* (7th Cir. 2009) ("[A] police department is not a suable entity under § 1983.").

Instructions for Service of Process and Future Submissions

The Court directs the Clerk of Court to issue summonses for service of the complaint on Defendants Chicago police officers M.J. Brannigan #9670 and A.M. Randazzo #19979. The Clerk of Court is directed to mail Plaintiff two blank USM-285 (U.S. Marshals service) forms. The Court advises Plaintiff that a completed USM-285 form is required for each named Defendant for whom summons has issued—here, Brannigan and Randazzo. The U.S. Marshal will not attempt service on a Defendant unless and until the required form for that Defendant is received. Plaintiff must therefore complete and return a service form for each Defendant, and failure to do so may result in the dismissal of the unserved Defendant, as well as dismissal of this case for lack of prosecution.

The U.S. Marshals Service is appointed to serve Defendants Brannigan and Randazzo. The Court directs the U.S. Marshal to make all reasonable efforts to serve Defendants. With respect to any former employee of the Chicago Police Department who can no longer be found at the work address provided by Plaintiff, officials there must furnish the U.S. Marshal with the

Defendant's last-known address. The U.S. Marshal will use the information only for purposes of effectuating service or to show proof of service and any documentation of the address shall be retained only by the U.S. Marshal. Address information will not be maintained in the Court file nor disclosed by the U.S. Marshal, except as necessary to serve Defendants. The U.S. Marshal is authorized to send a request for waiver of service to Defendants in the manner prescribed by Federal Rule of Civil Procedure 4(d) before attempting personal service.

Plaintiff is instructed to file all future papers concerning this action with the Clerk of this Court in care of the Prisoner Correspondent. Any letters or other documents sent directly to a judge or that otherwise fail to comply with these instructions may be disregarded by the Court or returned to Plaintiff.

Plaintiff's Motion for Attorney Representation

Finally, Plaintiff's motion for attorney representation is denied at this time. Although "[t]here is no right to court-appointed counsel in federal civil litigation," *Olson v. Morgan*, 750 F.3d 708, 711 (7th Cir. 2014), the Court has discretion to request that an attorney represent an indigent litigant on a volunteer basis under 28 U.S.C. § 1915(e)(1). In making the decision whether to recruit counsel, the Court must engage in a two-step analysis: (1) has the plaintiff made a reasonable attempt to obtain counsel on his own behalf or been effectively precluded from doing so; and, if so, (2) given the factual and legal complexity of the case, does this particular plaintiff appear competent to litigate the matter himself. *Pruitt v. Mote*, 503 F.3d 647, 654-55 (7th Cir. 2007) (en banc). Only after the plaintiff meets the threshold requirement that he has attempted to obtain counsel on his own or has been precluded from doing so, should the Court proceed to examine whether the plaintiff appears capable of litigating his own claims. *Pruitt*, 503 F.3d at 654; *Jackson v. County of McLean*, 953 F.2d 1070, 1073 (7th Cir. 1992); *Russell v. Bukowski*, 608 F.App'x 426, 428 (7th Cir. 2015) ("[B]efore a district court is required to consider recruiting counsel to assist a litigant in a civil case, the litigant must make a reasonable attempt to secure counsel for himself."). Here, Plaintiff failed to make a threshold showing that he made reasonable attempts to retain counsel—his motion for attorney representation shows no attempt to contact counsel whatsoever—and there is no indication that Plaintiff has been precluded from doing so. Plaintiff must attempt to retain counsel on his own before the Court will consider whether recruitment of counsel is necessary. The Court, moreover, lacks sufficient information at this early stage of the litigation to determine whether Plaintiff, who is better educated than may pro se litigants, is capable of proceeding effectively without counsel. The Court gives pro se litigants wide latitude in the pursuit of their lawsuits. Accordingly, Plaintiff's motion for attorney representation is denied without prejudice.

Date: 4/11/2017 /s/ Thomas M. Durkin